



OFFICE OF THE POLICE COMMISSIONER

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September 20, 2010

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Scott Pietropaolo**
Tax Registry No. 898293
90 Precinct
Disciplinary Case Nos. 84045/08 & 85917/09

The above named member of the service appeared before Assistant Deputy Commissioner John Grappone on October 13, 2009 and was charged with the following:

DISCIPLINARY CASE NO. 84045/08

1. Said Police Officer Scott Pietropaolo, assigned to PSA #6, on or about December 7, 2006, at or about 0830 hours, while on-duty, in the vicinity of [REDACTED], New York County, used excessive force against an individual known to this Department, in that, Officer Pietropaolo pushed said individual against a fence and struck him in the face with his arm.

P.G. 203-11, Page 1, Paragraph 2

FORCE

2. Said Police Officer Scott Pietropaolo, assigned as indicated in Specification No. 1, at the date, time and location indicated in Specification No. 1, did wrongfully and without just cause abuse his authority as a member of the New York City Police Department, in that, Officer Pietropaolo stopped an individual known to this Department.

P.G. 203-10, Page 1, Paragraph 5

ABUSE OF AUTHORITY

3. Said Police Officer Scott Pietropaolo, assigned as indicated in Specification No. 1, at the date, time, and location indicated in Specification No. 1, did wrongfully and without just cause abuse his authority as a member of the New York City Police Department, in that, Officer Pietropaolo issued a summons for disorderly conduct without a legal basis, to an individual known to this Department.

P.G. 203-10, Page 1, Paragraph 5

ABUSE OF AUTHORITY

P.O. SCOTT PIETROPAOLO DISCIPLINARY CASE NOS. 84045/08 & 85917/09

DISCIPLINARY CASE NO. 85917/09

1. Said Police Officer Scott Pietropaolo, assigned to the 90th Precinct, on or about March 17, 2009, while on duty and assigned to a post within the confines of Police Service Area 6 left the confines of Police Service Area 6, New York County, and traveled to the 90th Precinct, Kings County, without police necessity from approximately 0140 hours to 0235 hours.

P.G. 203-05, Page 1, Paragraph 2

**PERFORMANCE OF DUTY-
GENERAL REGULATIONS**

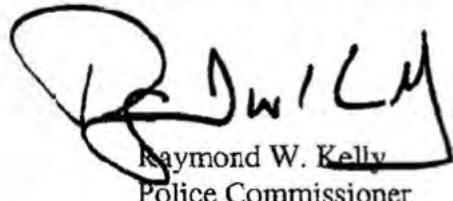
2. Said Police Officer Scott Pietropaolo, assigned to the 90th Precinct, on or about March 17, 2009, did fail and neglect to maintain and make complete entries in said Police Officer's Activity Log.

**P.G. 212-08, Page 1 and 2 ACTIVITY LOGS - COMMAND OPERATIONS
P.G. INTERIM ORDER #63, Pg. #1, Para #1, 2, 3, 5 REVISION TO PATROL
GUIDE PROCEDURES
202-22 "RADIO MOTOR PATROL OPERATOR", 202-23, "RADIO MOTOR
PATROL RECORDER" AND 212-08, "ACTIVITY LOGS"**

In a Memorandum dated June 15, 2010, Assistant Deputy Commissioner Grappone found the Respondent GUILTY of Specification Nos. 1 and 3 and Not Guilty of Specification No. 2 in Disciplinary Case No. 84045/09, and accepted the Respondent Pleading Guilty to both Specifications in Disciplinary Case No. 85917/09. Having read the Memorandum and analyzed the facts of these instant matters, I approve the findings, but disapprove the recommended penalty.

With a consideration of the totality of issues and circumstances in these matters, it is clear that the misconduct committed here involved serious deficiencies in judgment and integrity.

Taken concomitantly with a review of the Respondent's prior poor disciplinary and performance history with the Department, it is directed that, in addition to the forfeiture of 35 Vacation days, Respondent Pietropaolo is to be DISMISSED from the New York City Police Department; however, this penalty of dismissal will be held in abeyance pursuant to Section 14-115 (d) of the NYC Administrative Code for a period of one year, during which time the Respondent will remain on the force at the Police Commissioner's discretion and may be terminated at any time without a further hearing.



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

June 15, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Scott Pietropaolo
Tax Registry No. 898293
90 Precinct
Disciplinary Case Nos. 84045/08, 85917/09

The above-named member of the Department appeared before the Court on October 13, 2009, and January 13, 2010¹, charged with the following:

Disciplinary Case No. 84045/08

1. Said Police Officer, Scott Pietropaolo, assigned to PSA #6, on or about December 7, 2006, at or about 0830 hours, while on-duty, in the vicinity of [REDACTED], New York County, used excessive force against an individual known to this Department in that, Officer Pietropaolo pushed said individual against a fence and struck him in the face with his arm.

P.G. 203-11, Page 1, Paragraph 2 – FORCE

2. Said Police Officer, Scott Pietropaolo, assigned as indicated in Specification No. 1, at the date, time and location indicated in Specification No. 1, did wrongfully and without just cause abuse his authority as a member of the New York City Police Department in that Officer Pietropaolo stopped an individual known to this Department.

P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

3. Said Police Officer, Scott Pietropaolo, assigned as indicated in Specification No. 1, at the date, time, and location indicated in Specification No. 1, did wrongfully and without just cause abuse his authority as a member of the New York City Police Department in that, Officer Pietropaolo issued a summons for disorderly conduct without a legal basis, to an individual known to this Department.

P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

¹ The decision reserved date was April 29, 2010, due to the case being reopened for submission of additional evidence.

Disciplinary Case No. 85917/09

1. Police Officer Scott Pietropaolo, assigned to the 90th Precinct, on or about March 17, 2009, while on duty and assigned to a post within the confines of Police Service Area 6 left the confines of Police Service Area 6, New York County, and traveled to the 90th Precinct, Kings County, without police necessity from approximately 0140 hours to 0235 hours.

P.G. 203-05, Page 1, Paragraph 2 PERFORMANCE OF DUTY-GENERAL REGULATIONS

2. Police Officer Scott Pietropaolo, assigned to the 90th Precinct, on or about March 17, 2009, did fail and neglect to maintain and make complete entries in said Police Officer's Activity Log.

P.G. 212-08, Page 1 and 2 -- ACTIVITY LOGS -- COMMAND OPERATIONS
P.G. INTERIM ORDER # 63, Pg. #1, Para # 1, 2, 3, 5 REVISION TO PATROL GUIDE PROCEDURES
202-22, "RADIO MOTOR PATROL OPERATOR", 202-23, "RADIO MOTOR PATROL RECORDER" AND 212-08, "ACTIVITY LOGS"

The Department was represented by Mary Lynn Frey, Esq. Department Advocate's Office, and the Respondent was represented by Stuart London, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges under Disciplinary Case No. 84045/08 and a plea of Guilty to the subject charges under Disciplinary Case No. 85917/09. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty to the subject charges under Disciplinary Case No. 85917/09 is found Guilty as charged. The Respondent, under Disciplinary Case No. 84045/08, is found Not Guilty of Specification No. 2 and Guilty of Specification Nos. 1 and 3.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Dellareese Jones and Robert Pierce as witnesses.

Dellareese Jones

Jones testified that she works customer service for the New York City Department of Finance. On the morning of December 7, 2006, Jones was at home getting ready to go to work. [REDACTED]

[REDACTED]
Jones stated that on December 7, 2006, at approximately 8:40 a.m. she was getting ready to go to work and Pierce was getting ready to go to school. Jones and Pierce left the apartment together and waited in the hallway for the elevator. When the elevator arrived, there were four officers inside. While on the elevator Jones told Pierce to make sure he did not arrive late to school.

Once they walked out of the building Jones went left to the [REDACTED] subway station and Pierce went right to wait for a friend to go to school. At approximately 0845 a.m., Jones returned home to get a sweater from her apartment because it was cold outside. The elevator took a long time to arrive, and at that point she remembered having a sweater at work and decided to leave again. As she walked outside, Pierce walked in. Jones asked him what was he doing, and he told her that he, "Really got to go to the bathroom."

Jones mentioned that while waiting for the elevator to get her sweater, she saw two cops in the lobby, "Just looking around." On her way out, she stated that everyone heard her yelling at Pierce to hurry up and go to school. When Jones arrived at work she received a phone call from an officer. At first, the Officer told Jones that Pierce was in custody for trespassing and she told the officer that he lived in that building. Then the Officer said that they had Pierce and she had to pick him up. At that point, Jones spoke to her manager and left work and she went to [REDACTED] to pick Pierce up, but she was advised that he had been released. She did not know Pierce's whereabouts but assumed he had gone home.

When she arrived at her home, Jones was informed by a friend that Pierce was taken to school. She waited at home for him to arrive. When he got home, Pierce explained to Jones what happened, and she was upset. Jones could not understand what had happened, taking into account that the officers had seen her on the elevator telling Pierce to go to school, and them seeing Pierce agreeing he would.

Jones explained that when Pierce came home, his face was red, puffy, and had redness on the left and right side underneath his eyes. She asked Pierce if he was okay and he told her he had a headache. Jones took Pierce to [REDACTED] Hospital, and the doctor explained that he had a [REDACTED]

[REDACTED]. She was aware of how the injuries were sustained, because Pierced told her that "he was roughed up." Jones stated she felt hurt because he is her son. She was confused because the police officers saw them together and heard their conversation in the elevator.

On cross-examination, Jones stated that Pierce went to court for the summons² sometime in February of 2007, but could not remember the date. She then stated that he went alone, but remembered accompanying him once to court for a jaywalking summons. When asked if she was talking about a different summons, she agreed. Then she was informed that for the court date of February 14, 2007, Pierce did not show up and that a warrant was issued for his arrest. Jones acknowledged being aware of the warrant because an attorney from the court had called to inform her that Pierce did not show up. Pierce told her that he thought the case was on another date. Two days after the call, Jones and Pierce went to court to see the judge. The judge ordered Pierce to stay out of trouble for six months, but she did not remember if the judge adjourned the case in contemplation of dismissal.

When asked if she was present at the time Pierce sustained his injury, she stated she was not. When questioned about a call she received on March 15, 2007 from Sergeant Gallagher from Police Service Area 6 (PSA 6), asking about the facts of the case for investigation purposes, she acknowledged receiving the call but could not remember the name of the person she had spoken to. Jones further acknowledged telling that person (Gallagher), that she was not present when the incident occurred and that she had taken Pierce to the hospital. She denied telling Gallagher that the doctor said that Pierce was fine and not hurt in any way. During the phone call, Gallagher had asked Jones to have Pierce call him. She admitted to giving Pierce the message, but was not sure if he called.

On the date of the incident, Jones stated that she left the house around 8:30 am with Pierce. Pierce was going to school and to get there he could take the 2, 3, A, or the

² Pierce was issued a summons for disorderly conduct.

C trains. To get to the train station, Pierce has to walk straight after he leaves [REDACTED]

[REDACTED] Jones and Pierce both left the house at the same time. They both took the elevator together along with four officers that were already inside. When asked if she could point them out, she stated that she did not, "really look at them," because her "back was turned facing the door of the elevator." Jones testified that it was not unusual to see police officers in the elevator of her building. They check the roofs to make sure people do not trespass and they keep drug dealers out.

Jones stated that the officers in the lobby were the same officers she saw in the elevator. The officers were all in uniform. After they both went down in the elevator with the officers, Jones and Pierce walked through the hallway and out of the building. Jones made a left turn to go to the train station and Pierce turned right.

When Jones reached the train station she felt cold, so she turned back to get a sweater. She pressed the elevator button but the elevator took too long and she remembered that she had a sweater at work and walked out the building. On her way out Jones saw Pierce walking in. She asked him what he was doing and he told her he had to go to the bathroom. She told him to hurry because he was late for school and left. While walking to the building, she noticed two "police cars" outside and was not sure but thought she saw one uniformed police officer as well. She opened the front door of the building with her keys and stated that Pierce did not have a key at the time. Jones waited about six or seven minutes for the elevator, before she left. She did not see Pierce until she opened the door.

Jones stated that she was not aware that Pierce was standing outside the door. The door of the building is silver with a window but she did not see him because of

where she was standing. As she walked towards the door and pressed the buzzer, she pushed the door and saw Pierce. Jones was surprised to see him and wondered what the problem was. At that point, it was 8:50 a.m. so she asked him where he was going and he told her to the bathroom. She told him to do what he had to do and to go to school afterwards, and then she left.

When asked if there were any officers in the lobby, Jones stated that she saw two officers looking around when she was waiting for the elevator. She explained that when Pierce walked in, the officers' backs were still facing towards her. Jones spoke to Pierce for about one minute, spoke to him in a loud voice, pushed the door open and walked out.

Jones admitted having problems with Pierce's school attendance because he would miss "a couple of days." She also mentioned a problem Pierce had with an older male from the Housing Development. The male did not want Pierce around the area, "like they had some kind of turf he was suppose to not be around there and a guy put a gun to his head and told him to leave and to go back to Amsterdam." That incident and the guy's friends showing up at Pierce's school contributed to his absences. Jones stated she had to get a "safety transfer" for Pierce. She denied having any truancy problems while the situation was going on. She received about three calls from the school advising her about Pierce's absences around the time of the incident.

Jones stated that she had received a phone call from an officer from the precinct. She remembered calling back because the first time they called it had gone to voicemail. When she called back, no one answered, so she left a message, and they called her back. Jones arrived at the precinct approximately 7:00 p.m. but said it could have been earlier.

She admitted being at work prior to arriving at the precinct and that her work schedule was ten to six.

Robert Pierce

Pierce testified that he lives at [REDACTED]

[REDACTED]. On the morning of December 7, 2006, he was getting ready to go to school while his mother got ready to go to work. He recalled leaving his house around 8:40 or 8:45, with his mother. This was the usual time that he would leave his house, but he did not always leave with his mother. Pierce stated that school started at 9:15 a.m. and that it would take him no longer than ten minutes to get there.

Pierce explained that when he left the apartment with his mother, they both waited for the elevator. When the elevator arrived they entered the elevator, which also had four police officers. While inside, Jones told Pierce to go to school and not to stay outside and he told her "all right." When asked if he recognized the officers, Pierce stated that he had not seen them before. Once they got off the elevator Pierce and Jones walked outside of the building; Jones walked towards the train station and he walked towards [REDACTED] [REDACTED] [REDACTED]. He walked to [REDACTED] [REDACTED] to pick up a female that he was dating, so that they could walk to school together.

Pierce, however, did not meet his female friend on that day because while walking on [REDACTED] [REDACTED] he realized he had to go to the bathroom. He went back to his building to use the bathroom. He stated that when he went into the building, "my mom's was coming out of the building. I think she went back to the building for something, I don't know, but she opened the door for me and two officers

was in the lobby." He acknowledged that the two officers were two of the four officers he had seen earlier in the elevator. When he saw Jones, she told him in a loud voice to "hurry and do what he had to do, and go to school." He told her he would. He stated that it did not take him long to go back down and Jones had already left. He walked out of the building past two other officers standing outside, who also were part of the four officers he saw earlier in the elevator.

Pierce testified that as he walked towards [REDACTED] an officer [the Respondent] "tried to stop him," asking, "Where are you going?" Pierce kept walking as the Respondent questioned him and he told the Respondent he was going to school. The Respondent told Pierce, "You have to stop when a police officer is talking to you." Pierced replied, "I don't have to stop for nobody because I didn't do nothing so he grabbed me, he was like don't make me look like a fool out here, I don't want to curse." Pierce stated that the Respondent "grabbed me from behind."

At that point, the Respondent was standing in front of him and Pierce stopped because all four officers were there. When asked if any of the officers were in the court, he pointed to the Respondent. When asked which officer was standing in front of him on the date of the incident, he also pointed to the Respondent.

Once Pierce stopped walking the Respondent asked for his identification (ID), and he told the officer he only had his school ID. When the Respondent was asking for his ID he had Pierce over "the gate", in front of the building. Pierce acknowledged that when he walked away from the Respondent he was walking next to the gate, located on his right side. He stated that the Respondent grabbed him by the collar with both hands, pressing him against the gate. Pierce explained that the officer used a "little force on my

face it was nothing serious but the pain over the gate like they had me over the gate and they were like you making me look like a fool out here. I don't want to curse, you making me look like a fool out here." Pierce's back was leaning against the gate and the height of the gate was "up to my waist." He stated that the officers pulled him over the gate, put him on the floor with his stomach facing the ground and they handcuffed him.

Once Pierce was handcuffed, the Respondent placed him in the back seat of the Radio Motor Patrol car (RMP) and sat next to him. In the RMP, there were two officers, the Respondent and the "light skinned bald headed guy." When asked what happened inside the vehicle and if he was still in handcuffs, he answered, "Yeah, I am in handcuffs in an uncomfortable position so he pulls me up and now we are like shoulder to shoulder now. So as he is driving he is asking who I work for, who I worked for, I was like what are you talking about. I don't work for nobody. Then he [the Respondent] strike me twice (sic)." Pierce further explained that the Respondent smacked him twice with the back of his hand in the face. Then the Respondent hit Pierce two more times after Pierce told him that he had no right to hit him. That is when his nose started bleeding.

Pierce stated that he began blowing his nose because he wanted the blood to fall on his jeans to use as evidence that the Respondent had hit him. The Respondent then picked up a newspaper that was in the car and cleaned Pierce's nose. Throughout the car ride, Pierce did not have any conversation with the Respondent regarding school. The subject of school was only mentioned when he "came out my building and he was asking me where I was going."

When they arrived at the precinct, Pierce was told to stand by a bulletin board next to the desk, while the Respondent checked his name. Then, Pierce saw the captain

and tried to get his attention to talk to him, but it did not work. The captain ignored him. He was taken to the cell area, where he was told to take off his shoe laces.

Pierce was told that he was going to receive a summons for trespassing, but his grandmother was contacted and she verified that he lived at the address where he was picked up. He was then told that he would not be getting that summons, but he would receive a summons for "Disorderly conduct and refusal of compliance and I told him how did I refuse compliance, I never resisted no arrest, nothing, how do I have disorderly conduct if I never cursed at you or I never said nothing to you wrong." The Respondent did not explain to Pierce what was his failure to comply. Pierce did not see the Respondent and his partner again.

Pierce explained that he had a friend in his building whose mother is an officer at PSA 6. She and her partner drove Pierce to school. On their way there, he explained the incident to her and she told him to file a police report and to tell his mother when he got home. When he arrived home from school, he told his mother that, "I got struck by the police. She was like for real, she was shocked and all that. She wanted me to go to the precinct and make a police report."

They went to make the police report and afterwards they went to [REDACTED]
Hospital. At the hospital, the doctor told [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

As a result of the events of December 7, 2006, Pierce and Jones filed a complaint with the Police Department. Pierce admitted he tried to file a lawsuit but did not know the procedure and thought the lawsuit was the investigation that was being done. He admitted being aware of his participation in the investigation conducted by the Civilian Complaint Review Board (CCRB). He acknowledged that neither he nor Jones filed a civil lawsuit regarding the situation. At the time, of the incident, Pierce was sixteen and he is presently nineteen years old.

Pierce stated that at no time during his interaction with the Respondent, was he advised of the reason he was being stopped. He stated that he was in the precinct for a long time and was returned to school around one o'clock. Pierce testified that he was not advised the reason for the Disorderly Conduct summons and denied screaming at the officers prior to being handcuffed. When asked about his reaction when being handcuffed, he explained he was in shock and told them he had done nothing wrong. He could not believe that after the Respondent heard the conversation between Jones and him that he was being stopped. He estimated that it took 20 minutes from the time he exited the building to when he was put in the RMP. It took one minute from the time Pierce had left the building to the point where he was stopped by the Respondent.

On cross-examination, Pierce testified that on December 7, 2006, his neighborhood was a bad area and the building he lived in was considered a drug prone location. He stated that there were also shootings and stabbings that occurred in the neighborhood. He acknowledged that he had a gun put to his head once for being on someone else's turf, which occurred around October or November of 2006. Pierce stated that he stopped going to school for about two months, because he "heard there were kids

in front of the school waiting for me.” Jones was aware of his absence from school, and they got an Order of Protection because the guys that put the gun to his head would go around his school and wait in front for him.

He admitted receiving a disorderly conduct summons, when he was stopped by the officers and taken to the precinct. When questioned about not attending court for the summons, he admitted forgetting about it. He stated that a warrant was issued for his arrest and he was made aware a month and a half later, when he got arrested for Theft of Services. Pierce stated that it was the first time he had committed that offense and was put through the system because of the warrant. He was seen by a judge, and the judge vacated the warrant because he pled guilty to the Disorderly Conduct and Theft of Service. Pierce was advised by his lawyer to plead guilty or he would be sentenced to do community service.

He explained that he did not ignore the call regarding the warrant. He stated that he went to court but Jones did not. When asked if it was three warrants, he agreed that were. Pierce admitted knowing he had a warrant regarding the Disorderly Conduct case and forgot about the date to appear in court. When questioned what the other warrants were for, Pierce did not remember. He acknowledged that when he got stopped for the Theft of Service, he had three warrants pending and he stated that all three were vacated the day he saw the judge for the Theft of Service. When asked if he had any other “run ins” with the law since that time, he answered, “No.”

Pierce stated that on December 7, 2006, he had his school ID when he left his house. The school ID has the name of the school, the ID number, his name and date of birth. He admitted not turning around for the Respondent because he told him, “Hey

come here," instead of, "Hey let me talk to you." and Pierce just asked him, "For what." Pierce admitted that when he was asked by the Respondent to walk over to them, he kept walking because he believed he had not done anything wrong. When asked if the officers were in uniform, he agreed that they were. When questioned if he distrusts the police, Pierce stated, "At that time if I didn't do nothing and they are stopping me for no reason yes, I am going to keep on walking."

Pierce stated that he was not arrogant towards the Respondent. He stated, "I just told him why you stopping me for." He admitted that he walked away from the Respondent. When the Respondent asked for his ID, he lied to the Respondent by saying he did not possess one. When questioned about why he lied to the officers, Pierce explained that they had no reason to stop him. Pierce stated that at the time of the incident he did not have any anger towards police officers, but that now he did because it took three years to deal with the case.

When asked why he did not just hand over his ID to the Respondent and stop, Pierce stated, "Well, where I am from if you didn't do nothing keep it moving" referring to the tough neighborhood he lives in. He acknowledged that in the past people had to fight for their rights. Pierce agreed that he was angrier in the past but now he is more mature and understands that fighting is unnecessary. He agreed that if he had given the ID to the Respondent that the outcome of the situation might have been different but he still felt he did not deserve to be stopped. Pierce stated that if the situation was to occur again, he would just give his ID to avoid the "process" he had to go through.

On the date of the incident, Pierce was wearing a brown and tan Yankee hat, brown and tan sweater vest, black coat, blue Guess jeans and black Nike boots. Pierce

testified that there was never a time where his hands were inside his jacket. When questioned by the Respondent, Pierce had his hands out with his palms facing up and asked the Respondent, "What is the problem?" When asked if while he was approached by the Respondent, did he say, "What the fuck do you want" and had his hands underneath his jacket, he answered, "Never." When asked if cursing at the Respondent was the reason the Respondent pushed him against the fence, he stated, "No."

Pierce testified that he left around 8:40 a.m. with his mother (Jones) from their apartment. He had the keys to the door of the apartment which is different from the front door of the building. In the elevator, there were four uniformed officers. He acknowledged that the officer present in court was one of the officers in the elevator. He stated that while inside the elevator, he had a conversation with his mother. In their conversation, she told him that he "better not be horse playing around outside, get your ass to school." He agreed there were no kids outside to play around with.

Once downstairs, Pierce walked through the lobby out the front door, along with Jones. He realized he had to use the bathroom and turned back to his apartment but did not know Jones had returned as well. In front of the building Pierce saw two RMP's but there were no police officers outside. To enter the building Pierce waited outside for someone to open the door, since he did not have keys to the lobby door. It took him approximately ten minutes to get inside the building, because the officers that were inside did not let him in, even when he asked. At that point, his mother let him in as she was leaving the building.

Jones opened the door, saw Pierce, and told him to make sure he went to school. Pierce then went into the lobby of the building and upstairs to his apartment. Once he

was done, he walked out of the building and made a right toward 102nd Street and Amsterdam Avenue.

Pierce reiterated his encounter with the Respondent and stated that when he walked out of the building, the Respondent asked him, "Hey where you going," and Pierce kept walking. He turned around and "looked face to face, I told him I am going to school," and he kept walking. The Respondent told him, "You don't know when to stop when a police officer is talking to you." Pierce told the Respondent, "What did I do," and kept walking.

When Pierce was asked for I.D. by the Respondent, "As he had me over the gate," he lied and said he did not have one. When asked if he denied knowing his name when the Respondent asked him, Pierce stated that "I have no clue about me doing that." He was then read a passage where he had stated that the Respondent grabbed him by the jacket, threw him backwards over the gate, hit him in the face and asked for his name. He acknowledged that he lied to the Respondent and told him that he did not know his name. When asked if he was showing respect, Pierce stated that since the Respondent did not show him respect, he did not show any to the Respondent either. Pierce acknowledged that disrespecting the Respondent by walking away, stating he did know his name and not showing his ID were all intentional acts.

Pierce testified that the fence was small, it reached his waist. He also added that he did not fall to the ground "until they pull me over the gate and put me in handcuffs that's when I hit the ground." While he was on the ground, he was handcuffed. When asked if he lost sight of the Respondent when he walked out the building and made a right, Pierce answered, "No." When Pierce walked out of the building he made a right,

walked straight but did not make the second right because as soon as he turned the first corner, the Respondent was right there with the other officers and a sergeant. He admitted not knowing if there was more than one sergeant on the scene. He stated that when he was handcuffed his nose was not bleeding. Pierce stated that the sergeant was at the scene when he was handcuffed, but Pierce was not sure if the sergeant was present during the whole incident. He stated that "there was only two cops outside at the time when [The Respondent] was approaching him." He denied that the Respondent had his elbow against his chest while handcuffed, but stated that when the Respondent forced him to get up, after being handcuffed, he hit Pierce's "jaw a little bit." Pierce's jaw was not fractured or broken, nor was he admitted to the hospital because of this incident. He was given Motrin for the headache and released.

Pierce stated that he never apologized to the Respondent. On the way to the precinct, the Respondent held Pierce's nose back with a piece of newspaper to stop the bleeding. He stated that the injury to his nose was sustained "in the car when he (the Respondent) struck me twice." Inside the RMP was another officer described by Pierce as a "light skin, bald headed guy," believed to be named Devin. The car did not have a "cage" or partition³. Pierce explained that the Respondent was sitting in the back seat with him.

Once at the precinct, Pierce gave the officers his grandmother's telephone number and the officers called his grandmother to verify his address. During the time of the incident, there were about three older people standing outside watching. Pierce acknowledged that he did not curse at the Respondent. He stated that he wanted to file a lawsuit but did not know how to go about it. When asked if the purpose of the lawsuit

³ Partition-is an interior structure that divides the front seat from the back seat of a Radio Motor Patrol car.

was to receive money, Pierce answered, "I guess so." Pierce stated that he was "roughed up", mistreated by police officers and was angry about it at that day.

On re-direct examination, Pierce testified that the only conversation he had after the last conversation with his mother was the conversation with the Respondent. Pierce was physically in the hands of the Respondent and over the fence at the time when he refused to give his name.

The Respondent's Case

The Respondent called Sergeant William Gallagher as a witness. The Respondent also testified in his own behalf.

Sergeant William Gallagher

Gallagher is a ten year member of the Department. He was promoted to sergeant in 2006 and was transferred to PSA 6. He is currently assigned to the Internal Affairs Bureau (IAB) and is currently the Command Central Sergeant.

On December 7, 2006, Gallagher was working a 0655 by 1552 tour, assigned as the patrol supervisor. He stated that his duties were to supervise patrol operations and "officers in response to major radio runs that happen during the tour." At approximately 9:10 a.m. Gallagher went to scratch⁴ the Respondent's Activity Log ("memo book") at 868 Amsterdam Avenue. As he signed the Respondent's memo book, the Respondent advised him that he was going to stop an individual. Gallagher stated that he did not interfere with the Respondent's decision to make the stop because the Respondent did not need a supervisor's permission to stop anyone.

⁴ Scratch-when a supervisor, mainly sergeant on patrol, signs an officer's Activity Log documenting that they read the Activity Log entries and visited the officer on patrol.

Gallagher stated that when the Respondent told Pierce to stop, he just kept walking, increasing his speed as he walked. Gallagher stated that it appeared as if Pierce was trying to get away from the Respondent. When Pierce turned the corner this made Gallagher feel uncomfortable, because he lost sight of Pierce and thought that a dangerous situation might be awaiting him. Gallagher, the Respondent, Officer Dotterman, Officer Gagliotro, and Sergeant Gurniak turned the corner⁵. Gallagher stated that Pierce put his hands in his jacket and said "What." Gallagher explained that in the manner in which Pierce put his hands inside his jacket, it indicated to him that Pierce was trying to harm him and the officers. He further stated that he really could not remember whether Pierce actually put his hands inside his pockets or waist, but because he could not see his hands he was afraid Pierce was reaching for a weapon.

Gallagher acknowledged that during his interview with CCRB investigators on January 31, 2007, he stated that Pierce put his hands in his pockets "really quick." Gallagher added that when Pierce put his hands in his pocket, the Respondent and Dotterman pushed him against a fence. The fence was small "something that would keep a dog out of a yard. It wasn't designed to keep a person out of the area. It was something small, it was like I would say maybe less than the height of this" indicating his waist area. (It was stipulated that this was two to three feet in height.)

Gallagher acknowledged not having any problems with the way the Respondent handled the situation. He believed the Respondent acted according to the law and with police procedure because he thought that there was a reasonable possibility that this person was armed. "He pushed him up over the fence to take him out of balance, he didn't strike him, he didn't hit him with a baton, he didn't draw his firearm, he pushed

⁵ First names were not provided.

him over this tiny fence and that is all he did...so he couldn't really reach for anything."

Gallagher explained that Pierce was against the fence arching backwards and his hands were not in his pockets. He agreed that that was appropriate police procedure.

Gallagher stated that the Respondent placed Pierce under arrest for Disorderly conduct and took him immediately to the precinct because there were a lot of people watching and gathering. He explained that "after that happened there were a lot of people around. This is [REDACTED] There are a lot of people walking down the street so there was a very, very large crowd of people watching, so Officer Pietropaolo placed him under arrest for Disorderly Conduct. He was brought to the police car and brought back to the station house I'm assuming."

Gallagher stated that Pierce was removed from the scene "quickly because there was a crowd gathering and when a crowd gathers and you have this arrest situation I mean you want to move this person out of the area as soon as possible. I don't know what people in the crowd are going to do. We just want to take him in and move on with it." Gallagher testified that the issuance of the Disorderly Conduct summons was appropriate because "Well, first of all, the simulation of reaching into your pocket to me in my opinion causes public alarm, it makes myself, Officer Pietropaolo and the other New York City police officers fearful for their lives that maybe we are about to get shot, maybe we are about to get stabbed so I think that's public alarm I think that's also behavior. I think the fact that that action caused the large crowd to gather I think that's also more and more probable cause that Officer Pietropaolo had probable cause for disorderly conduct."

At one point after the incident, Gallagher was assigned to investigate this incident under the supervision of the precinct commanding officer. As part of the investigation Gallagher called Jones and asked her to give him a brief summary of the events but she told him she was not at the scene of the incident. The only thing Jones was aware of was that Pierce had been "roughed up." Gallagher asked to speak with Pierce but he was not home at that moment. He told Jones to have Pierce call him but Pierce did not return his call. Gallagher stated that Jones told him that she took Pierce to the doctor and the doctor found Pierce to be fine.

Pursuant to the investigation, Gallagher prepared formal reports (Respondent's Exhibit [RX] A). Gallagher stated that he was aware of the reason for the stop. The stop was officially made by Dotterman⁶. Gallagher stated that Dotterman told him, "He believed there was reasonable suspicion of a drug transaction. He also stated that he believed by looking at him, that he could be a truant and the basis of the fact I think the day of the week and maybe you could refresh my recollection it was Monday that this happened or a Tuesday,...it was a school day, the fact that it was 9 o'clock in the morning roughly and the fact that he did look young I think his suspicion of truancy and that was also one of the reasons that Officer Dotterman told him to stop."

Gallagher stated that the conclusion of the investigation was made by Captain Catalina, who was supervising his investigation. Catalina's recommendation exonerated the officer. Gallagher further testified that he did not see the Respondent strike Pierce in the face, make a wrongful stop, nor abuse his authority by giving Pierce summons for Disorderly Conduct.

⁶ The Court was informed by defense counsel that Dotterman no longer works for the Department and is an officer with another department and presently resides outside the state of New York and was not available to appear at trial.

On cross examination, Gallagher testified that Pierce putting his hands in his pockets in a quick motion "would have caused me public alarm and the people around us because that would be something that would be perceived as somebody drawing a weapon." He acknowledged that it was his interpretation of the way Pierce "put his hands in his pockets would cause people to be alarmed." He agreed that public alarm is one of the requirements to issue a disorderly conduct summons. He further agreed that the crowd gathered after the Respondent had placed Pierce under arrest. Gallagher could not give an exact amount of people that gathered to observe, but agreed that it was more than ten. When he was questioned about when did he observe the crowd gathered, he stated, "You know what, I can't honestly tell you at what point and time the crowd started to gather." He explained that at that point in time that was not his focus. He explained that "At this point we are dealing with the potential of a weapon being involved so my focus is I didn't want to get shot, I didn't want a police officer to be shot or stabbed or any litany of bad things that could happen."

Gallagher agreed that Pierce's actions of putting his hand in his pocket caused him some alarm and felt that the public did as well. He could not recall if there were any members of the public around the time when Pierce was asked to stop and physically stopped. He agreed that no one from the crowd interfered with any police activity. When asked if he thought the crowd gathered because an arrest was being made, Gallagher answered, "I can't speculate." He stated that he did not know when the crowd formed but believed it could have happened when Pierce was pushed against the fence and arrested. He added that, "I would say that the [REDACTED]

[REDACTED] e 9 o'clock on a Monday or Tuesday there would be a lot of people there and I

can't speculate as to why unknown people would stop ,watch. I can't testify to that."

Gallagher admitted not knowing that the Respondent was stopping Pierce until the gestures were made. Gallagher did not recall if the Respondent explained the reason for the stop to Pierce.

Gallagher stated that he did not know the exact reason the Respondent issued the summons because he never asked the Respondent. When asked if by his own observation it was a valid summons, he stated, "I think in my opinion Officer Pietropaolo had probable cause to issue a Disorderly Conduct summons. That is my opinion." When questioned if he had any details as to why the stop was made, Gallagher explained that as a sergeant he does not need to "approve or disapprove" of an officer's issuance of a summons. When confronted about Gallagher stating that it was appropriate for the Respondent to issue the summons, he stated, "I think it was. It's not that I approve it or disapprove it. A police officer has a power to issue a summons on his own."

Gallagher stated that during his supervisory visit to the Respondent, he saw Dotterman, another police officer, and a sergeant. When the Respondent told Gallagher that he was going to stop Pierce, the two other officers were sitting in the back seat of an RMP. When the Respondent decided to take action he was standing at the door of the RMP. Both Gallagher and the Respondent observed Pierce walk out of the building. Gallagher did not recall how long he was talking to the Respondent before Pierce exited the building. Gallagher did remember that it was about 9:00 in the morning.

When asked if he knew around what time school started around the area, Gallagher stated, "I think every school is different but I think it is generally in the 8 to 8:30 time frame." But he agreed that he was not sure if Pierce's school started around that

time in the neighborhood. Gallagher agreed that Pierce looked of school age, and thought that it was reasonable to think that he was a truant. When asked, "Though someone walking out of their home at that time in the morning it would be reasonable to believe that they would be going to school; isn't that correct?," and he answered, "No, it would be reasonable to think that they are possibly truant. That is how I would respond to that." Gallagher was further asked, "So it could be reasonable to think that they are possibly a truant but you didn't know?" He answered, "Correct, I did not absolutely know. You are right."

Gallagher stated that there were many people leaving the building and agreed that teenagers leave to school "a little bit before or a little bit after school would start." However, he stated, "As I said before 9 o'clock is in my opinion a little later. Now I don't know absolutely what time every school starts just to me someone who actually you know I went to school and most of us all of us did at some point and time at 9 o'clock for me would be a little later than normal which would make me think that it's possible that someone would be a truant."

Gallagher testified that no weapon was found on Pierce's possession and he was not aware that Pierce had lived in the building that he was exiting from. He stated that at the time of the incident he did not know the reason for Pierce's stop, but he was informed afterwards by the Respondent. When asked, "Do you believe that Police Officer Pietropaolo had reasonable suspicion to stop Robert Pierce in that moment where you observed him stopped?" Gallagher stated, "At the moment I didn't know because as I said before he had told me that he was going to stop him. He didn't tell me why. At that

moment he doesn't have to tell me why it's for him to stop." He agreed that the Respondent did not need any permission for the stop.

Gallagher stated that he did not exonerate the Respondent, "The captain completed that, the captain made the decision." Gallagher testified that knowing what he knows now, he still feels that the Respondent had reasonable suspicion to stop Pierce. When asked, "And you're aware that reasonable suspicion needs to mean that he believes that Robert Pierce either just committed or is committing or is about to commit a crime," Gallagher answered, "Correct." Then he was asked, "It isn't a gut instinct of what you think might be going on; [sic] correct?" and Gallagher stated, "Correct."

Gallagher agreed that Pierce turned the corner and that he caused alarm by not stopping for the police. In addition, the hand gestures made by Pierce caused further alarm. When asked if he had observed a bulge on Pierce as he walked out of his home, Gallagher answered, "I was scratching Officer Piertropaolo's book and if I recall he was walking out so I can't tell you that I was looking at him other than maybe out of corner of my eye so I can't testify whether he had a bulge or not." Gallagher admitted being aware of the criminal activity that went on in that area, at the time he went to scratch the Respondent. He explained that the development Pierce lived in is a well known drug prone building, not that he was inferring that Pierce was involved, but it was a possibility.

When asked if because the building was a drug prone location, it was a good enough reason to stop a person walking out, Gallagher answered, "Yes." He stated that the distance Pierce walked from the time he stepped out of the building to the time he was stopped, was about half a block. Gallagher assumed that Pierce walked on the sidewalk and could not recall if Pierce ran when he was asked to stop because it was after

Pierce turned the corner and Gallagher could not see around the corner. Gallagher stated that when the Respondent asked Pierce to stop, Pierce just walked faster and did not obey the order to stop.

Gallagher testified that he could not remember who turned the corner first, the Respondent or himself. He also stated that he did not see the Respondent's arms touch Pierce's face. He agreed of being aware of some physical interaction between the Respondent and Pierce. Gallagher noted that while on the scene he saw when the Respondent pushed and balanced Pierce over a small fence. When asked if he was aware of any injuries the Respondent caused Pierce, Gallagher stated, "I have to disagree with you that there was an injury. During my investigation as I said before I spoke with the mother of the complainant who told me that she had taken him right to the hospital to see a doctor and that he was fine. Those are the words of the mother of the child. I said if there was some type of injury she would have said to me my child was injured. She didn't, she said she immediately took him to the hospital and that he wasn't – he was okay some variation." Gallagher was not aware that Pierce's nose was bleeding at the scene.

On re-direct, Gallagher was handed RX B, he agreed it was the summons issued to Pierce on December 7, 2006. The summons described that the Respondent charged Pierce with Penal Law § 240.20 (2) (3) and (7) (RX C)⁷, which are the sections for Disorderly Conduct. Right next to the charge, the Respondent described that Pierce refused to comply. When asked if he heard the order given to Pierce, if there was any compliance, and if he was present, Gallagher answered, "Yes," "No," and "Yes."

⁷ A copy of the Penal Law Book was submitted into evidence as RX C.

On re-cross, Gallagher was not sure if there was a subsection for the "Disorderly Conduct order for failing to comply with an order" He agreed that his observation of Pierce was because he was at the scene and not because Pierce made any unreasonable noise leaving the building. Gallagher agreed that Pierce created a hazardous and physically offensive condition. He explained that Pierce's actions of turning the corner, stopping, turning around and putting his hands inside his pockets, created the thought of a fearful situation.

The Respondent

The Respondent testified that he has been in the Department for a little over 19 years. He is currently assigned to the 090 Precinct and had previously worked at PSA 6. He was assigned to PSA 6 during December of 2006. His assignment was uniformed patrol.

The Respondent testified that on December 7, 2006, he was working a 0705 by 1540 tour. The Respondent was instructed by his supervisor to pay special attention to the [REDACTED]. There had been prior shootings and stabbings around that area and he was doing routine patrol to make sure that those situations did not occur again. The Respondent stated that he had a partner by the name of Dotterman. He further explained that Dotterman is no longer a member of the New York City Police Department and he may currently be working out of state.

The Respondent testified that he and Dotterman were patrolling the [REDACTED] [REDACTED]. The Respondent stated that at approximately

8:45 a.m., he stated that he "spotted [Pierce] doing like hand to hand transactions with known people who drug deal in the area of [REDACTED]. He observed the transaction from across the street inside his RMP, which was parked towards the corner on [REDACTED]. He stated that while he observed motions of drug activity he did not visually see what was being exchanged, "Couldn't see what he was handing back and forth so I just kept observing what was going on. It was actually motions of drug activity but I couldn't see what exactly was being exchanged so I couldn't act on anything so I just kept to observe what was going on."

At approximately 8:50 a.m., the Respondent saw Pierce enter the building. The Respondent and Dotterman followed Pierce inside the building to observe "because we are trying to find out what is going on, possible drugs [sic] transactions now, possible trespassing in the building, in the housing development, possible you know, there is truancy a lot of it and but my main thing was the drug dealing at that point and the trespassing into the building to do those transactions maybe go to an apartment to get from the stash which they keep you know, marijuana, cocaine, whatever type of drugs that they might be selling out there."

Once inside the building, the Respondent observed Pierce go inside the elevator and he tried to see what floor the elevator had stopped on. He could not remember what floor it stopped at but agreed he went to the floor where the elevator stopped and did not see anyone. He then went back downstairs and waited to see if he would come back out.

The Respondent stated that while waiting outside, Sergeant Gallagher and Sergeant Gurniak pulled up to scratch his memo book. He explained that at the time that Gallagher arrived, Pierce walked out of the building. He stated that he told Gallagher, "I

am going to stop him." The Respondent added that he was "absolutely" sure that Pierce, who had walked out of the building, was the same individual he had observed walking into the building after engaging in a drug transaction.

The Respondent testified that when Pierce walked out of the building he told Pierce, "Excuse me, I want to talk to you for a second." Pierce ignored the Respondent's request and kept walking southbound on the sidewalk towards Amsterdam Avenue. The Respondent told him, "I am talking to you I said I want to talk to you," but Pierce, according to the Respondent, continued walking and picked up his speed and "started to give little head looks back..." The Respondent had asked Pierce approximately six times to stop before reaching the corner, but Pierce ignored him and picked up the pace. The Respondent stated that he "didn't know if he had drugs on him, guns on him, whatever. At that point my level of actually my – of being afraid of something that this guy could have went up you know, two fold up and I tried to stop him again so I yelled to him, I said I am talking to you. I said I want to talk to you, stop....As he got to the corner at one point he put his hands he had a black jacket on he put his hands in his jacket. Now at that point I was getting really nervous and I was – I am starting to think that maybe he might have a gun in his pocket. At that point so I kept going closer to him at that point as I got closer to him and I am telling him to stop he kind of turned the corner off Amsterdam as I turned the corner he went like a couple feet and I am almost as close as we are maybe even a little closer."

Once the Respondent and Pierce had turned the corner, they were approximately two feet from each other. The Respondent told Pierce, "Guy I am talking to you," and Pierce turned around with his hands inside his pocket and "screamed...What mother

follower, and jumped up and he just started pulling at his pockets.” The Respondent feared that Pierce was reaching for a gun so he pushed Pierce towards the fence with his hands. That is when he struck Pierce with his “elbow in a downward motion, to put [Pierce] over the fence there.”

To prevent Pierce from getting his hands out of his pocket, the Respondent bent him backwards over the fence and put all his weight on Pierce. The Respondent stated that he “was screaming check his pocket now check his pocket quick because I had no way to get to his pocket I was on top of him.” Another Officer checked Pierce’s pockets but did not find a gun. The Respondent stated that Pierce was yelling all types of obscenities and a crowd started gathering, including the two (2) individuals he had seen Pierce do the hand to hand with. At that point, the Respondent felt that the situation was getting dangerous and he placed Pierce on his knees and handcuffed him. To get away from the scene Pierce was placed in the RMP and driven to the precinct. The Respondent testified that while walking towards the RMP he noticed that Pierce was bleeding from his nose. He stated that it could have possibly happened when he struck Pierce with his elbow, when he went for Pierce’s chest area to put him over the fence.

Once inside the RMP, Pierce blew his nose and “he had blood coming out onto his clothes.” To avoid Pierce from bleeding “all over the place”, the Respondent cleaned Pierce’s bloody nose with a piece of newspaper because he did not have any napkins. Pierce told the Respondent, “You don’t have to do that, I am fine.” At the precinct, the Respondent called Jones to inform her that Pierce was in custody and that she needed to pick him up. Jones, however, did not answer but the Respondent left her a couple of messages.

The Respondent testified that he called Pierce's grandmother and explained the situation to her. She told him she understood and further told the Respondent that Pierce does not go to school. The grandmother asked if Pierce was going to be taken "down town" and the Respondent explained that Pierce was going to get a summons, but that he needed an adult to release him. The Respondent tried calling Jones a few more times, but was not able to reach her, nor had she called back. The Respondent stated that after making the telephone calls, he went to the cell area to explain to Pierce that the actions he took caused him to be in the position he was in. The Respondent stated that Pierce apologized and the Respondent issued him a summons and released him.

The Respondent stated that when Pierce's mother arrived he had already left for the day. He acknowledged not having any further involvement regarding the case, except when he had the interview with CCRB. The Respondent stated that he prepared a hand written Stop, Question, and Frisk report (UF-250) and submitted it for input into the system (RX D). The Respondent was shown RX B and he acknowledged that it was the summons he had issued to Pierce. The Respondent also charged Pierce with "Disorderly Conduct, refuse or fail to comply," which in the Penal Law is § 240.20 (2) (3), and (7) (RXB).⁸ When asked if he meant to charge Pierce with all three subdivisions, the Respondent agreed he did. He explained that Pierce made unreasonable noise by cursing and screaming which are subdivisions (2) and (3). The final action which the Respondent considered hazardous and threatening was when Pierce put his hands in his pockets and turned around in a threatening manner, subdivision (7).

⁸ Penal law § 240.20 (2), (3), and (7) read as follows:

- (2) He makes unreasonable noise; or
- (3) In a public place, he uses abusive or obscene language or makes an obscene gesture; or
- (7) He creates a hazardous or physical offensive condition by any act which serves no legitimate purpose.

The Respondent testified that he did not use excessive force to strike. He also explained that when his elbow hit Pierce, it was not intentional; he was trying to aim for Pierce's chest. The Respondent stated that he had stopped Pierce because Pierce was involved in a drug transaction, believed he had trespassed into the building, and was possibly a truant. He stated that when he asked Pierce for I.D. and personal information Pierce was not compliant.

The Respondent stated that Pierce was placed in a marked RMP. He sat in the back seat next to Pierce and Dotterman was the operator. The Respondent agreed that he was the recorder⁹ for that day but sat in the back with Pierce because the RMP did not have a cage and that is the protocol. He denied striking Pierce while inside the vehicle.

On cross-examination, the Respondent testified that the incident took place before 9 a.m.. He acknowledged that schools have different start times and he is aware that truancy starts at 9 a.m.. He admitted not being assigned to truants on December 7, 2006.

The Respondent stated that when he first saw Pierce, "he was doing like a hand to hand with a female and I was observing him." He stated that he was not able to see what he had in his hand "but it was indicative of a drug transaction of a hand to hand." The Respondent stated that Pierce then went to an older gentleman who was standing on the left side of the building and also made a hand to hand, but again he was not able to see what was passed. When asked if they could have been shaking hands, the Respondent stated, "No... Because of the way that they were touching, was more of a give take, more than a hey, how are you doing..."

The Respondent explained that he did not immediately stop Pierce because he wanted to observe if the transaction would go any further. Therefore, he followed Pierce

⁹ The Recorder is the officer in charge of all written activity for the day in a sector car.

into the building to see if he would go to any apartment that would probably be considered a "stash house." He stated that Pierce "walked into the building behind somebody."

The Respondent was reminded of his CCRB interview on January 16, 2006, and was asked if he remembered being asked the following questions and his answers at that interview:

Question: What was he doing when you observed him?

Answer: He was hanging out talking with him.

Question: Was he doing anything other than just standing there?

Answer: No, we didn't see anything, we didn't see anything at that point.

Question: How long was he hanging out there before he went into the building?

Answer: He went in from there he went to the other side.

Question: What was that?

Answer: There was a couple of other people over there that he was hanging out with.

The Respondent acknowledged giving those statements at the interview and stated that he remembered "saying that there was a hand to hand activity which wasn't written in there."

The Respondent was further asked if he recalled saying at the CCRB interview that "they were talking you know, people talk with their hands you can't really they are not gonna they see police cars and they are not going to do any transaction if I am not there so I can't say they were but he was hanging out with them and he was talking and

he went into the building." When the Respondent was asked if he remembered making that statement during the interview he replied, "I was there and said stuff I don't remember exactly how I said this if it is and it was me then yes." The Respondent stated that he remembered talking about the hand to hand during his interview.

[It should be noted that it was stipulated to by both the Department and Counsel for the Respondent that during the transcript of his interview he only states that Pierce was with drug dealers but he does not state that he was involved in any hand to hand transactions.]

The Respondent was then asked if he remembered stating during that interview that he did not remember how Pierce gained entry to the building, and he replied, "Honestly I don't remember, I don't remember, don't know if he somebody walked in prior I honestly don't remember."

The Respondent explained that his main concern was Pierce. He wanted to see if Pierce would enter an apartment to get more drugs to supply the drug dealers. If this occurred he would give the information to Anticrime or Narcotics to get the drug suppliers. The Respondent agreed that Pierce was interacting with drug dealers that were known to the area. He admitted that the information he knew of the two individuals were from other "police officers that know," but he had never interacted nor arrested either individual before.

The Respondent stated that he did not see Pierce interact with an older woman inside the building nor walking outside the building. He was outside waiting since he lost sight of Pierce inside the building. He stated that Pierce exited the building at approximately 9:15 a.m.. When Pierce came out the building the Respondent asked Pierce to stop approximately six times before physically stopping him.

The Respondent testified that Pierce was carrying a book bag. When asked if the situation took place around normal school hours, he answered that it depended on the school. But that to his knowledge 9:00 a.m. to 9:15 a.m. kids are already supposed to be in school. When asked, "Did it occur to you that someone leaving their residence with a bag on their back around the time that school would start would be going to school is a possibility?" he answered, "If at first, when I first encountered Mr. Pierce he was coming out of the building with a bag on I would assume that but the interaction with the older woman, known drug dealers that are known in the area, the hand to hand transactions puts it into a different level of thinking."

The Respondent acknowledged issuing Pierce a summons, which was written at the precinct. He explained that the summons was issued not only for failure to comply but "was a combination of the whole incident between putting people's fear, causing public alarm, it was a combination." He stated that Pierce cursed throughout the whole incident and that people gathered to see from the moment he approached Pierce.

FINDINGS AND ANALYSIS

Disciplinary Case No. 85917/09

The Respondent is charged under Specification Nos. 1 and 2 that on or about March 17, 2009, while on duty he left the confines of his assigned post, Police Service Area 6, and traveled to the 90 Precinct without police necessity from approximately 0140 hours to 0235 hours and also failed to maintain and make complete entries in his Police Officer's Activity Log.

The Respondent pled Guilty to the aforementioned charges and as such is found Guilty as charged.

Disciplinary Case No. 84045/08

Specification Nos. 1, 2, and 3

The Respondent is charged with abusing his authority in stopping Pierce (Spec. No. 2); using excessive force against Pierce (Spec. No. 1), and abusing his authority by issuing him a summons for Disorderly Conduct without a legal basis to do so (Spec. No. 3).

This case involves a police initiated “street encounter” with a civilian where the Respondent claims that he had the right to stop and use force against Pierce and issue him a summons for Disorderly Conduct. Pierce in contrast claims that he did not do anything wrong and the Respondent had no right to stop him, use force against him and issue him a summons.

The Court of Appeals in People v. DeBour, 40 N.Y. 210 (1976) addressed the issues at hand by laying out four levels of permissible actions that police may take when they initiate street encounters with individuals. Under Level One, an officer may approach a person and request information from that person if the request is supported by an “objective credible reason” that does not necessarily stem from criminal behavior. Level Two is somewhat more intrusive in that it allows for a “common law right of inquiry” where the officer has a “founded suspicion” that some sort of criminal activity is unfolding. Level Three allows the officer to forcibly stop the individual if he has “reasonable suspicion” that the person is committing or about to commit a felony or

misdemeanor and Level Four allows the officer to effectuate an arrest if the officer has “probable cause” that the individual committed a crime. The focus of this Court should be whether the Respondent’s conduct was reasonable given the facts of this case.

At the outset, this Court finds that the Respondent was permitted, under Level III, to stop Pierce for committing criminal trespass in a New York City Housing Development. Criminal Trespass under Penal Law section 140.10 (e) is a class B misdemeanor.¹⁰ While there was no evidence submitted that showed that “No Trespass” signs were posted in the Douglass Housing Development, this Court is aware that it is common knowledge that such signs are indeed posted in New York City Housing developments, especially in drug prone neighborhoods like the one where this building is located.

Through the testimony of Jones and her son Pierce, this Court was told that on December 7, 2006, at approximately 8:40 a.m., they left their home together—Jones for work and Pierce to attend school.

At one point Jones and Pierce, while traveling in separate directions, decided to return to their apartment: Jones returned to get a sweater and on her way out Pierce, who did not have a key for the lobby door, was waiting outside the front door for someone to let him in. He told the Court that he needed to use the bathroom and as Jones let him in she told him to hurry so that he would not be late for school. The time was approximately 8:50 a.m.

Pierce claimed that when he left home the first time he walked towards 102nd Street and Broadway to meet a female he was dating to walk to school together. Prior to

¹⁰ P.L. Section 140.10 states “A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in a building or upon real property (e) where the building is used as a public housing project in violation of conspicuously posted rules or regulations governing entry and use thereof.”

meeting the female, he claimed that he had to go to the bathroom and decided to go back home where he met his mother leaving the building. This Court is somewhat suspicious of whether Pierce was being truthful about needing to use the bathroom or if he had actually decided to go back home and not attend school that day. He has a history of truancy and this Court is not totally convinced that he intended to attend that day. Nevertheless, the testimony of Jones and the Respondent confirms that Pierce did go back into the building and then a few minutes later came back out. It should also be noted that Pierce testified that he does not have a key to the outside door of the building and waited for someone to let him in. That someone in this case was his mother.

The Respondent also testified that he observed Pierce walk "in the building behind somebody" indicating that he did not see him use a key to get in which can be viewed as evidence that he did not live at that location. Even Officer Dotterman, when he was interviewed by Gallagher, believed that Pierce was committing Criminal Trespass when he saw him enter and exit the building (RX A). Both the Respondent and Dotterman are experienced housing officers and know what to look for when spotting trespassers and it appears to this Court that waiting for someone to open the door to get in and entering and leaving a building after only a short stay are reasonable indicators of someone who does not live at the location.

When Pierce left the building the second time¹¹ he stated that he walked past two police officers who were standing by the building. When he again was walking towards 102nd Street and Broadway, the Respondent "tried to stop him", by asking "Where are you going?" When Pierce kept walking the Respondent told him "You have to stop when

¹¹ The Respondent did not testify that he saw Pierce leave the first time with Jones.

a police officer is talking to you.” Pierce then told the Respondent that he did not have to stop because he did not do anything.

The Respondent testified that he saw Pierce hanging out in the vicinity of the building prior to entering and exiting the building. This Court, without going into more details at this point of what occurred during this encounter, finds that the Respondent, who was entrusted with keeping the Douglass Housing free from trespassers, had the right to stop Pierce based on his and Dotterman’s reasonable suspicions that Pierce committed the crime of Criminal Trespass.¹²

Accordingly, the Respondent is found Not Guilty of Specification No. 2.

The findings by this Court that the Respondent had reasonable suspicion to stop Pierce based on him committing the crime of Criminal Trespass does not automatically mean that the Respondent was permitted to use excessive force to make the stop. In this Court’s opinion an appropriate use of force under this type of stop should have consisted of subjecting Pierce to certain physical contact such as physically blocking his path or grabbing his arm or wrist.¹³

The Respondent testified and was adamant during his initial testimony that the primary reason for stopping Pierce was more serious in nature than trespass. He made it clear and meant for this Court to believe that Pierce was a drug dealer and that he feared that Pierce was carrying drugs and a gun and ready to use it.

The Respondent testified that at approximately 8:45 a.m., he observed Pierce doing “hand to hand” drug transactions “with known people who drug deal in the area.”

¹² The Respondent was also permitted to question Pierce as to why he was not in school at that hour of the morning.

¹³ See New York Search & Seizure 1996 ed. Pg. 119, footnote No. 103.

He stated that he was sure it was "motions of drug activity" but he could not see what was being exchanged from where he was positioned in his RMP across the street from where Pierce was. Accusing Pierce of drug dealing with several individuals is a very serious allegation because he is basically accusing Pierce of committing multiple acts of selling some type of controlled substance, a possible Class B felony under New York's Penal Law § 220.39.

The Respondent further stated that at approximately 8:50 a.m. after observing Pierce engaging in "drug activity", he saw Pierce enter the building in the manner previously stated and he followed him inside to see if any drug transactions were going to take place or if Pierce would lead him to a stash house where more drugs would be located, or as he stated "possible trespassing in the building...but my main thing was the drug dealing...."

The Respondent stated that he lost Pierce in the building and went back outside to see if Pierce would come back out. Once outside, he met with Gallagher and also saw Pierce exit the building. He told Gallagher he was going to stop Pierce because he was "absolutely" sure that Pierce was the same individual he observed engaging in drug transactions.

The Respondent stated that as Pierce walked out of the building he asked him "Excuse me, I want to talk to you for a second." Pierce ignored him and kept walking. The Respondent claimed that he asked him a total of six times to stop but that Pierce began to walk faster and started to "give little head looks back" before reaching the corner. The Respondent stated that his fear was that he "didn't know if he had drugs on him, guns on him, whatever." At one point, the Respondent stated that he yelled to get

Pierce to stop and as they turned the corner he saw Pierce put his hands in his pocket and scream "What mother fucker, and jumped up and he pulled at his pockets." The Respondent feared that Pierce was reaching for a gun and he pushed Pierce towards a fence. At that point he struck Pierce with his elbow and had him bent over the fence. The Respondent was yelling for other officers to check Pierce's pockets. No gun or drugs were found on Pierce. The Respondent stated that Pierce was yelling obscenities and a crowd started to gather. The Respondent put Pierce on his knees and handcuffed him.

Believing the situation was becoming dangerous, the Respondent took Pierce to the patrol car and drove to the station house. On the way to the car, the Respondent noticed that Pierce's nose was bleeding. The Respondent believed that he struck Pierce in the face with his elbow and that is what caused his nose to bleed. Inside the vehicle Pierce blew his nose on his clothes and the Respondent cleaned his nose with newspaper that he had in the car.

Gallagher testified that when he arrived at the scene the Respondent told him that he was going to stop Pierce. Gallagher did not witness Pierce do anything of a criminal nature at that point but as a supervisor he did not inquire about or question the decision to stop him because it was Gallagher's reasoning that the Respondent did not need a supervisor's decision to make the stop.

According to Gallagher, when the Respondent told Pierce to stop, he also saw that Pierce just kept walking. Gallagher noted that Pierce increased his speed as he walked and this caused Gallagher to believe that Pierce was trying to get away from the Respondent. Gallagher then became uncomfortable when Pierce turned the corner

because he lost sight of him and this again caused Gallagher to be alarmed that a dangerous situation might be waiting for him. When he turned the corner, Gallagher saw Pierce put his hands in his jacket pocket and said, "What?" Gallagher believed that the manner in which Pierce put his hands in his pocket indicated to him that Pierce was trying to harm him and his officers. Gallagher admitted that it was his interpretation of the way Pierce put his hands in his pocket that would cause people to be alarmed even though he could not really remember whether Pierce actually put his hands inside his pockets or waist. It was because he lost sight of his hands that caused him to become afraid that Pierce was reaching for a weapon.

Gallagher pointed out that when Pierce put his hands in his pocket the Respondent and Officer Dotterman pushed Pierce over a three foot high fence to knock him off balance. Pierce was against the fence arching backwards. Gallagher stated that this was police procedure in that "he didn't strike him, he didn't hit him with a baton, he didn't draw his firearm, he pushed him over a tiny fence and that is all he did."

It should be pointed out that neither the Respondent nor Gallagher testified that they saw anything that resembled a gun in Pierce's possession an object of any kind or a bulge in his coat or waistband. Nor did they hear Pierce threaten them in any way especially threats of shooting them. It should also be pointed out that Gallagher did not know what occurred prior to the Respondent telling him that he was going to stop Pierce and he also did not know that the Respondent struck Pierce's nose and caused it to bleed.

What is disturbing to this Court is that upon further questioning of the Respondent his story was significantly challenged and substantially changed with regard to Pierce's alleged drug dealing. During this questioning he was confronted with the fact that during

his CCRB interview he never told investigators that he observed Pierce conducting “hand to hand” drug transactions with individuals from the neighborhood. Rather, his statements were that Pierce was hanging out talking to people who the Respondent believed were drug dealers, although the Respondent had no prior personal involvement with them. A review of that interview by the Court showed the following:

Investigator Clarke: Okay what was he (Pierce) doing when you observed him?

P.O. Pietropaolo: He was hanging out talking with them.

Investigator Clarke: Was he doing anything other than just standing there?

P.O. Pietropaolo: No we didn’t see anything; we didn’t see anything at that point no. (RX E)¹⁴

Also during that interview, his explanation of what Pierce and the individuals were doing was that, “And they were talking and you know people talk with their hands. You can’t really, they not gonna, they see police cars and they are not going to do any type of transaction if I am not there. So I can’t say they were but he was hanging out with them and talking and he went into the building.”

When the Respondent was asked at trial if he remembered making that last statement during the interview he replied, “I was there and said stuff I don’t remember exactly how I said this if it is and it was me then yes.” The Respondent insisted, however, that he remembered talking about hand to hand during the interview even though it was not recorded.¹⁵

What is most troubling to this Court is that while the Respondent never mentioned that Pierce was drug dealing during the interview, which was close in time to the event, at trial he created a very detailed picture of Pierce doing “hand to hand” drug transactions.

¹⁴ This quote was not from testimony at trial. It was taken directly from the CCRB interview by the Court. (RX E)

¹⁵ It should be noted that after this Court reviewed the Respondent’s CCRB interview it could not find any mention by the Respondent stating that he saw Pierce actually doing hand to hand drug transactions.

Unfortunately, in the opinion of this Court, the Respondent appears to have created this picture after his rough handling of Pierce and then used that picture of drug dealing to try to justify to this Court the force he used to stop Pierce.

This Court finds that this major discrepancy in the Respondent's statements caused him to lose all credibility with this Court regarding his testimony of drug dealing by Pierce. Moreover, without the allegation of drug dealing, Pierce's behavior which Pierce also testified to—ignoring the Respondent when told to stop, walking away and even becoming irate at being told to stop by a police officer does not give a serious indication that Pierce was getting ready to do harm to the officers. Without more, this behavior more likely indicates the frustration on the part of a person who does not want to be stopped by a police officer especially where the person believes, as Pierce testified, that he did not do anything wrong, a fact which was ultimately proven to be true.¹⁶

This Court is mindful that Pierce did not help himself by acting the way he did towards the Respondent. He readily admitted that he did not stop or turn around because the Respondent told him "Hey come here," instead of "Hey let me talk to you." Pierce just asked "For what?" It should be noted that it appears from the evidence that Pierce actually turned around and stopped when he had asked the Respondent what he wanted thereby eliminating any need to use force to stop him.

Pierce testified that there was never a time where his hands were inside his jacket. When he was questioned by the Respondent, he stated that he had his hands out with his palms facing up. When he was told by the Respondent to stop, he again did not help

¹⁶ There is no conclusive proof that Pierce was not going to school and since he lived in the building he was not a trespasser.

himself by stating, "What is the problem?" He emphatically denied telling the Respondent "What the fuck do you want" with his hands underneath his jacket.

Moreover, when the Respondent asked him for his ID, Pierce lied and told him he did not have one even though he had his school ID on him. Pierce admitted that he lied about his ID because he felt that the Respondent had no reason to stop him. If the situation was to occur again, however, he stated that he would just show his ID to avoid the "process" he had to go through.

This behavior by Pierce, however childish and disrespectful, did not warrant being grabbed by the collar and pushed against and bent over a fence where he was then forced to the ground and handcuffed in the middle of the street in front of people on their way to work.

With regard to Pierce being struck in the face, the Respondent stated that he must have struck him with his elbow when he pushed him up against the fence. Pierce stated that the Respondent also made contact with his face, but stated that "it was not serious." Once he was handcuffed, however, and put in the back seat of a police car, Pierce stated that the Respondent asked him who he worked for and when he told him "I don't work for nobody..." the Respondent smacked him twice in the face with the back of his hand causing his nose to bleed. Pierce began blowing his nose because he wanted the blood to fall on his jeans as proof that the Respondent struck him. The Respondent then used a newspaper that was in the car to wipe Pierce's nose.

The Respondent is not charged with striking Pierce in the vehicle. It is not in dispute that the Respondent struck Pierce in the face and caused his nose to bleed. It also is not in dispute that Pierce let his nose bleed on his pants and that the Respondent wiped

his nose with newspaper. Whether the Respondent is attempting to conceal hitting Pierce in the car or Pierce is lying to make the incident more serious in nature does not affect the charges of excessive force.¹⁷

The grabbing of Pierce, hitting him in the face and bending him over the fence is excessive force for the crime of Criminal Trespass and not justified, in this Court's opinion, under the plain facts of this case.

At the stationhouse, the Respondent issued a summons to Pierce for Disorderly Conduct (RXB) He explained that Pierce violated three sections of Penal Law § 240.20 Sub. (2), (3), and (7). He further explained that Pierce made unreasonable noise by cursing and screaming which is covered under subdivisions (2) and (3). The final action which the Respondent considered hazardous and threatening under subdivision (7) was when Pierce put his hand in his pocket and turned around in a threatening manner. Subdivision (7) actually states "He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose." (RX C)

The Respondent explained that the summons was issued not only for failure to comply but "was a combination of the whole incident between putting people's fear, causing public alarm, it was a combination." He stated that Pierce cursed throughout the whole incident and that people gathered from the moment he approached Pierce.

At this point the Respondent's credibility is again put in question. Both Pierce and Gallagher cast doubt on whether the Respondent was justified in issuing Pierce a summons for Disorderly Conduct. Pierce testified that at the stationhouse he was first told that he would be getting a summons for trespass, but when his grandmother

¹⁷ While there is no allegation before this Court of Pierce being struck in the car which caused his nose to bleed, as previously stated Gallagher did not see any injuries to Pierce during his street encounter with the Respondent.

confirmed that he lived in the building that he exited of, he was then told that he was not getting a summons for trespass but would be getting a summons for "Disorderly Conduct and refusal of compliance...." He then told the Respondent "did I refuse to compliance (sic), I never resisted no arrest, how do I have disorderly conduct if I never said nothing to you wrong." The Respondent did not explain to Pierce what was his failure to comply.

Gallagher observed the Respondent place Pierce under arrest for Disorderly Conduct and took him immediately to the stationhouse because there were a lot of people that had gathered to watch what was happening. Gallagher noted that this area of the Upper West Side had a lot of street traffic at that time of day. Gallagher based his approval for the Disorderly Conduct arrest on "well, first of all, the simulation of public alarm, it makes myself, Officer Pietropaolo and the other New York City Police Officers fearful for their lives that maybe we are about to get shot, maybe we are about to get stabbed so I think that's public alarm I think that's also behavior. I think the fact that that action caused the large crowd to gather I think that's also more and more probable cause that Officer Pietropaolo had probable cause for disorderly conduct."

Gallagher admitted, however, that the crowd had gathered only after the Respondent had placed Pierce under arrest. When further questioned about when the crowd had gathered, he stated "You know what, I can't honestly tell you at what point and time the crowd started to gather." His explanation for his lack of certainty was that "At this point we are dealing with the potential of a weapon being involved so my focus is I didn't want to get shot, I didn't want a police officer to be shot or stabbed or any litany of bad things that could happen."

When he was asked if he thought the crowd gathered because an arrest was being made, Gallagher answered, "I can't speculate as to." He stated that he did not know when the crowd formed but believed it could have happened when Pierce was pushed against the fence and arrested.

This Court finds that based on the evidence in this case the Respondent created a false impression of why he used the amount of force against Pierce and an equally false impression for the issuing of a Disorderly Conduct summons. This Court further finds that Pierce did not create a hazardous condition or cause a crowd to gather by his actions or by his language—whether he was cursing or not. As Gallagher pointed out there was a high volume of people already on the street at the time of the incident and people began to focus on this incident only after the Respondent took police action and tackled Pierce.

Accordingly, I find the Respondent Guilty of Specification Nos. 1, and 3.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y. 2d 222 (1974).

The Respondent was appointed to the Department on October 15, 1990. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has pled Guilty to leaving the confines of his assigned post and failed to maintain and make complete entries in his Police Officer's Activity Log. The Respondent has also been found Guilty of using excessive force against Pierce and issuing him a summons for Disorderly Conduct without a legal basis to do so.

The Department has recommended a penalty of the forfeiture of 35 vacation days and placement on one year dismissal probation. This Court concludes that while the Respondent abused his authority, there is no need for him to be placed on dismissal probation.

Accordingly, based on the foregoing, I recommend that the Respondent forfeit a period of 35 vacation days.

Respectfully submitted,

John Grappone
by *M. X*
John Grappone

Assistant Deputy Commissioner - Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER SCOTT PIETROPAOLO
TAX REGISTRY NO. 898293
DISCIPLINARY CASE NOS. 84045/08 AND 85917/09

In his yearly evaluations of 2007, 2008, and 2009, the Respondent was rated 4.5 “Highly Competent”, 3.5 “Above Competent” and 3.0 “Competent,” respectively.

The Respondent disciplinary record is as follows: On June 10, 1995, he received charges and specification for wrongfully drawing and pointing his firearm—penalty forfeiture of 20 vacation days. On October 11, 2000, he received charges and specifications for improper uniform; failed to prepare reports; discourteous; failed to comply with orders; March 20, 2001, late for duty; failed to monitor his portable radio while on patrol; discourteous to a supervisor; failed to submit a leave of absence report—penalty forfeiture of 30 vacation days. On September 25, 2001, charges and specifications received for conduct prejudicial to the Department—penalty forfeiture of 30 vacation days.

The Respondent was placed in Level II Performance Monitoring in April, 1998, due to his overall record. On August 14, 2001, he was placed on LEVEL III Special Monitoring due to poor performance.

For your consideration.


John Grappone
Assistant Deputy Commissioner – Trials